

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WILLIAM C. RODEN, M.D.,

Plaintiff,

v.

THE PAUL REVERE LIFE
INSURANCE COMPANY,

Defendant.

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C.A. No. 1:15-cv-00255

INDEX OF STATE COURT FILED DOCUMENTS

Date Received / Filed

- | | | |
|----|---|---------|
| 1. | Docket Sheet from Travis County, Texas, 419th Judicial District | N/A |
| 2. | Plaintiff's Original Petition | 3/6/15 |
| 3. | Citation Issued to The Paul Revere Life Insurance Company | 3/10/15 |
| 4. | Citation (Executed) to The Paul Revere Life Insurance Company | 3/16/15 |

Respectfully submitted,

By: /s/ Dennis M. Lynch
Dennis M. Lynch
State Bar No. 90001506
dennis.lynch@figdav.com
Roshanak Khosravighasemabadi
State Bar No. 24048587
rosh.khosravi@figdav.com

FIGARI & DAVENPORT, L.L.P.
3400 Bank of America Plaza
901 Main Street, LB 125
Dallas, Texas 75202-3796
(214) 939-2000
(214) 939-2090 (Facsimile)

ATTORNEYS FOR DEFENDANT
THE PAUL REVERE LIFE INSURANCE
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent by certified mail, return receipt requested, to Mr. Jon Michael Smith, 3305 Northland Drive, Suite 500, Austin, Texas 78731, on this the 3rd day of April, 2015.

/s/ Dennis M. Lynch
Dennis M. Lynch

1

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Velva L. Price
District Clerk
Travis County
D-1-GN-15-000887

No. D-1-GN-15-000887

WILLIAM C. RODEN, M.D.,
Plaintiff

v.

THE PAUL REVERE LIFE INSURANCE
COMPANY,
Defendant

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

419TH JUDICIAL DISTRICT

Plaintiff's Original Petition

TO THE HONORABLE COURT:

William C. Roden, M.D. ("Roden"), Plaintiff, respectfully files this original petition complaining of The Paul Revere Life Insurance Company, ("Paul Revere") and would show:

I. Discovery Control Plan, Level 2

Pursuant to Texas Rule of Civil Procedure 190.3, this case is governed by Discovery Control Plan, Level 2.

II. Nature of the Case

Dr. Roden's claim arises from Paul Revere's incorrect interpretation of his long term disability policy. Pursuant to Texas Rule of Civil Procedure 47, Plaintiff states that he seeks damages within the jurisdictional limits of this court, specifically monetary relief over \$200,000.00 but not more than \$1,000,000.00 and non-monetary relief in the form of declaratory judgment relief.

III. Parties

Plaintiff is an individual residing in Georgia.

Defendant, The Paul Revere Life Insurance Company, is a foreign insurance company authorized to do business in Texas and that is doing business in Texas and may be served with citation by and through its registered agent, Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

IV. Venue

Venue is proper in Travis County because all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Travis County. Tex. Civ. Prac. & Rem. Code Ann. § 15.002(a)(1).

V. Conditions Precedent

All conditions precedent to recovery have been met or have occurred.

VI. Facts of the Case

On February 21, 1989 defendant issued long term disability policy number 0102379911 to Dr. Roden. The policy, as explained in defendant's letter of February 9, 1989, included coverage for "Total Disability in Your Occupation." This means that Dr. Roden is considered Totally Disabled if, **because of injury or sickness**, he is unable to perform the important duties of "Your Occupation." The letter went on to explain that "Your Occupation" means orthopedic surgeon for Dr. Roden and that if he was performing the important duties of an orthopedic surgeon immediately prior to the time disability begins, and then was unable to perform those

duties, Dr. Roden would be considered unable to perform the important duties of "Your Occupation" and would, therefore, be Totally Disabled as defined by the policy.

Dr. Roden purchased available additional benefits under the policy at significant additional monthly expense. Importantly, he purchased the "Lifetime Total Disability" benefit. Policy Schedule II states that for Injury and Sickness and for Total Disability starting before age 65, the maximum benefit period for Dr. Roden is his lifetime. In other words, if Dr. Roden became Totally Disabled before he turned 65 either because of injury or sickness, then defendant would be required to pay benefits to him for the remainder of his life.

Dr. Roden practiced as an orthopedic surgeon for more than thirty years before being injured on June 11, 2011. On that date Dr. Roden suffered a serious shoulder injury when he fell assisting his daughter move furniture. Prior to his accident, Dr. Roden was able to perform the important duties of his occupation as an orthopedic surgeon. Afterward, despite his attempts to rehabilitate his shoulder, Dr. Roden was no longer able to perform the important duties of his occupation.

The Lifetime Total Disability Benefit Rider distinguishes between a Total Disability due to Injury and a Total Disability due to Sickness as follows:

FOR INJURY

For Total Disability due to Injury, the monthly amount We will pay will be the amount shown on the Policy Schedule. Any Cost of Living benefit rider added to Your Policy shall apply to this amount.

FOR SICKNESS

For Total Disability due to Sickness, the monthly amount We will pay will be based on the amount shown on the Policy Schedule. Any Cost of Living benefit rider added to Your Policy shall apply to this amount. The amount shown on the Policy Schedule plus any Cost of Living increase that applies to this rider shall be multiplied by a factor. The factor to be used will be based on Your age at the start of Total Disability which continues until age 65.

Factors by age for Total Disability due to Sickness

1.0 for 55 or less	.5 for 60
.9 for 56	.4 for 61
.8 for 57	.3 for 62
.7 for 58	.2 for 63
.6 for 59	.1 for 64

Defendant has taken the position that Dr. Roden's Total Disability is due to Sickness instead of Injury. By making that determination, defendant has reduced the amount it is going to pay Dr. Roden by 70%.

"Injury" is defined as "accidental bodily injury sustained after the Date of Issue and while Your Policy is in force." "Sickness" is defined as "sickness or disease which first manifests itself after the Date of Issue and while Your Policy is in force."

The policy attempts to answer the question, "What if a disability is due to more than one cause?" as posed on page 13. Section 6.2 of the policy discusses the possibility of "Concurrent Disability" and states that, "If a disability is caused by more than one Injury or Sickness, or from both, We will pay benefits as if the Disability was caused by only one Injury or Sickness."

Dr. Roden's Total Disability is clearly due to his injury in June of 2011. However, defendant has taken the position that his Total Disability is due solely to Sickness. Defendant has also improperly calculated Dr. Roden's benefits. Dr. Roden has appealed defendant's decisions in this regard, but his appeal was denied.

VII. First Cause of Action: Breach of Contract

Defendant's actions amount to a breach of contract between Dr. Roden and Paul Revere. Dr. Roden applied for and was accepted for insurance coverage by Defendant. He paid the

required premiums, entering into a binding contract for insurance with Paul Revere. Paul Revere breached the contract by deciding that Dr. Roden's Total Disability was due to Sickness and not Injury and by incorrectly calculating his benefits. Dr. Roden is entitled to recover his actual damages, court costs and reasonable and necessary attorney's fees pursuant to Texas Civil Practice & Remedies Code, Section 38.001, et seq.

VIII. Second Cause of Action: Texas Insurance Code Section 541.060

Defendant's actions as described above amount to Unfair Settlement Practices as defined by Texas Insurance Code, Section 541.060. Specifically, defendant has misrepresented facts and policy provisions and has failed to attempt in good faith to settle a claim on which liability has become clear. Defendant's violations have been a producing cause of damages to Dr. Roden. Because Defendant has acted knowingly, Dr. Roden is entitled to an additional award of three times his actual damages. Texas Insurance Code, Section 541.152(b). He is also entitled to his reasonable and necessary attorney's fees.

IX. Third Cause of Action: Texas Insurance Code Sections 542.051-061

Defendant's actions also amount to a violation of Texas Insurance Code, Sections 542.051-061. As such, Plaintiff is entitled to 18% per annum in addition to the amount of his claim, plus attorneys' fees.

X. Request for Declaratory Judgment

Pursuant to Texas Civil Practice & Remedies Code, Section 37.001, et seq., Dr. Roden seeks a declaration from this Court, including, but not limited to the following: (1) that his Total

Disability was caused by an Injury; (2) and that Dr. Roden is entitled to receive his full monthly benefit under the policy for his lifetime. Additionally, Dr. Roden seeks his reasonable and necessary attorney's fees pursuant to the Declaratory Judgment Act.

XI. The Policy is Ambiguous

In the alternative, Dr. Roden's pleads that the insurance policy made the basis of this lawsuit is ambiguous.

Specifically, the policy states that, "If a disability is caused by more than one Injury or Sickness, or from both, We will pay benefits as if the Disability was caused by only one Injury or Sickness." But the policy does not say what happens if it is determined that a disability is caused by both an Injury and a Sickness. It is reasonable to interpret the policy to mean that if a Total Disability is due to both an injury and an illness, then Paul Revere will pay benefits as if the Disability was caused by the injury. Because at least one reasonable interpretation would favor Dr. Roden, that is the interpretation that must be followed in this case.

XII. Jury Demand

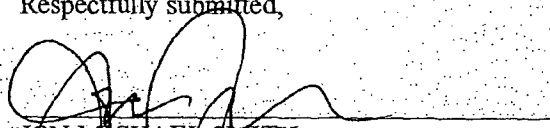
Plaintiff has requested that this case be decided by a jury as allowed by Tex. R. Civ. P. 216. The appropriate jury fee has been paid.

XIII. Prayer

Plaintiff prays that upon final trial of this case he have judgment against Defendant for actual damages, an additional three times his actual damages, reasonable and necessary

attorney's fees, pre-judgment and post-judgment interest, costs of court and such other relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jon Michael Smith", is written over a horizontal line.

JON MICHAEL SMITH
State Bar No. 18630750
3305 Northland Drive
Suite 500
Austin, Texas 78731
512/371-1006
512/476-6685 fax

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____

COURT (FOR CLERK USE ONLY): _____

STYLED William C. Roden, M.D. v. The Paul Revere Life Insurance Company

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet: Name: Jon M. Smith Email: jon@jonmichaelsmith.com Address: 3305 Northland Drive Ste 500 City/State/Zip: Austin, Texas 78731 Telephone: 512-371-1006 Fax: 512-476-6685 Signature: Jon Smith State Bar No: 18630750		Names of parties in case: Plaintiff(s)/Petitioner(s): William C. Roden, M.D. Defendant(s)/Respondent(s): The Paul Revere Life Insurance Co [Attach additional page as necessary to list all parties]		Person or entity completing sheet is: <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
2. Indicate case type(s) or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract <input type="checkbox"/> Consumer/DTPA <input checked="" type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage:	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other: Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:		Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:			
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:			
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case):					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input checked="" type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					

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Indemnización al trabajador, bancarrota o por incapacidad del Seguro Social)

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under Chapter 952, Occupations Code. Certificate No. 9303

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 by: GC
 Assured Civil Process Agency

C I T A T I O N
 T H E S T A T E O F T E X A S
 CAUSE NO. D-1-GN-15-000887

WILLIAM C. RODEN, M.D.

, Plaintiff

vs.

THE PAUL REVERE LIFE INSURANCE COMPANY

, Defendant

TO: PAUL REVERE LIFE INSURANCE COMPANY
 BY SERVING THROUGH ITS REGISTERED AGENT
 CORPORATION SERVICE COMPANY
 211 EAST 7TH STREET SUITE 620
 AUSTIN, TEXAS 78701-3218

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION of the PLAINTIFF in the above styled and numbered cause, which was filed on MARCH 6, 2015 in the 419TH JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, March 10, 2015.

REQUESTED BY:
 JON MICHAEL SMITH
 3305 NORTHLAND DR STE 500
 AUSTIN, TX 78731-4991
 BUSINESS PHONE: (512) 371-1006 FAX: (512) 476-6685



Velva L. Price
 Travis County District Clerk
 Travis County Courthouse
 1000 Guadalupe, P.O. Box 679003 (78767)
 Austin, TX 78701

PREPARED BY: WINKLER PATRICIA

--- -- -- -- -- R E T U R N --- -- -- -- --

Came to hand on the ____ day of _____, _____ at _____ o'clock ____ M., and executed at _____ within the County of _____ on the ____ day of _____, _____, at _____ o'clock ____ M., by delivering to the within named _____, each in person, a true copy of this citation together with the PLAINTIFF'S ORIGINAL PETITION accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ _____

Sworn to and subscribed before me this the

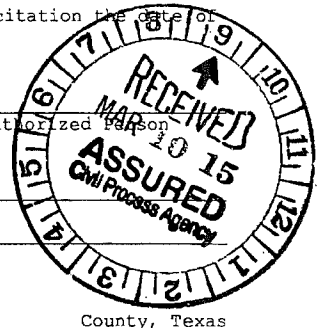
____ day of _____, _____.

Notary Public, THE STATE OF TEXAS

Sheriff / Constable / Authorized Person

By: _____

Printed Name of Server



____ County, Texas

D-1-GN-15-000887

SERVICE FEE NOT PAID

P01 - 000028051



Original



Service Copy

MAR 16 2015
At 3:40 P.M.
Velva L. Price, District Clerk

, Plaintiff

Defendant



RETURN

Printed Name of Sender _____

~~PO1~~ - 000028051

Service Copy

CAUSE NO. D-1-GN-15-000887

RETURN

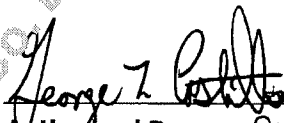
Came to my hand: 3/10/2015 , at 09:00 o'clock A.M. , the following specified documents:

- Citation
- Plaintiff's Original Petition
- Jury Demand
- Civil Case Information Sheet

and executed by me on: 3/10/2015 , at 3:46 o'clock PM , at

211 E. 7TH STREET, SUITE 620, AUSTIN, TX 78701, within the county of TRAVIS, by delivering to PAUL REVERE LIFE INSURANCE COMPANY, by delivering to its registered agent, CORPORATION SERVICE COMPANY, by delivering to managing agent/employee SUE VERTEES , in person, a true copy of the above specified documents having first endorsed on such copy the date of delivery.

I am over the age of 18, not a party to nor interested in the outcome of the above numbered suit, and I declare under penalty of perjury that the foregoing is true and correct.



Authorized Person: GEORGE L. CASTILLO ; SCH11440

Expiration Date: 8/31/2017

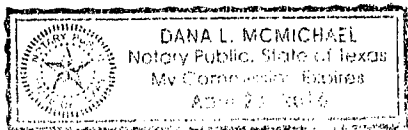
ASSURED CIVIL PROCESS AGENCY

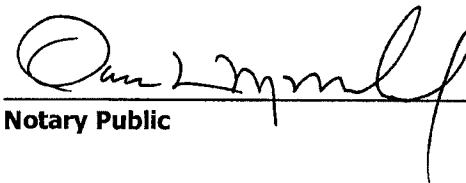
5926 Balcones Dr. Ste. 290, Austin, TX 78731

STATE OF TEXAS }

VERIFICATION

Before me, a notary public, on this day personally appeared the above named Authorized person, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements and facts therein contained are within his personal knowledge and experience to be true and correct. Given under my hand and seal of office on this the 11th day of MARCH , 2015




Notary Public